

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 682 of 1997

in

SPECIAL CIVIL APPLICATION No 6116 of 1984

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgement?-No.

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2. To be referred to the Reporter or not?-Yes.

3. Whether Their Lordships wish to see the fair copy
of the judgement?-No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil
Judge?-No.

RAMSUNDER SHAMLAL

Versus

Y.B.JHALA OR HIS SUCCESSOR

Appearance:

MRS KETTY A MEHTA for Appellant

MR SP HASURKAR for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI

Date of decision: 25/08/98

ORAL ORDER: (Per K.G. Balakrishnan, C.J.)

This is an appeal directed against the judgment in Special Civil Application No.6116 of 1984. The petitioner therein is the appellant. The appellant was a Police Constable in the Police Department and disciplinary proceedings were initiated against him and he was given a show cause notice on 27.1.1971 and he was

dismissed from service on 2.3.1971 and he was reinstated in service on 12.12.1974. The appellant was again given notice on 26.9.1975 and the appellant was dismissed from service on 17.12.1975 and the appellant was reinstated in service on 8.7.1982. Pursuant to show cause notice dated 17.9.1982, departmental proceedings culminated in some punishment and the disciplinary authority held that the period of suspension shall be treated as suspension and he was entitled to get subsistence allowance for this period. Aggrieved by the same, the appellant preferred the Special Civil Application, but the learned single Judge held that the appellant had an alternative remedy by way of Revision before the Government and as the appellant had filed the Special Civil Application without exhausting that remedy, the Special Civil Application was liable to be dismissed. That judgment is assailed before us.

We heard the appellant's counsel. The counsel for the appellant contended that the appeal was filed by the appellant before the State Government and it was disposed of by the I.G. of Police, exercising his delegated power granted by the Government and, therefore, a revision was not maintainable. It may be noted that the appellant was not challenging the punishment which was imposed on him. His only grievance was that the disciplinary authority was not competent to hold that the suspension period should have been treated as such and he should have regularised this period and the appellant should have been permitted to draw the salary and allowances for this period. It is submitted that the appellant was not given notice before the disciplinary authority held so. Reliance was placed by the appellant on the decision of the Supreme Court in Depot Manager, Andhra Pradesh State Road Transport Corporation v. V. Venkateswarulu and another, AIR 1995 SC 258. In that case, the delinquent employee was removed from service consequent on his involvement in a criminal case. He was acquitted of the criminal charge and was reinstated. The employee claimed full salary for the period during which he was under suspension, but his claim was....

the authorities, but the employee challenged the said action of the authorities. In paragraph 4 of the judgment at page 260, while interpreting the provisions of the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations 1967, it was observed :-

"... The employee is entitled to the payment of subsistence allowance during the period of suspension under Regulation 20. Regulation 20(3) which denied subsistence allowance to an employee suspended under Regulation 18(1)(b) (during investigation/trial on a criminal charge) has since been deleted by the amendment. We agree with the High Court that with the deletion of Regulation 20(3) the classification made under Regulation 21(3) has become redundant. The High Court was, however, not justified in holding that on acquittal and reinstatement an employee becomes - without any further scrutiny entitled to the payment of full salary for the period during which he remained under suspension. Regulations 21(1) and 21(2) are equally applicable to an employee who remained under suspension because of investigation / trial on a criminal charge. The competent authority is bound to examine each case in terms of Regulations 21(1) and 21(2) and in case it comes to the conclusion that the employee concerned is not entitled to full salary for the period of suspension then the authority has to pass a reasoned order after affording an opportunity to the employee concerned...."

(emphasis supplied)

It is pointed out by the appellant's counsel that under the Bombay Police Punishment Rules, this is not a punishment and under Rule 152 of the B.C.S.R., it is specifically mentioned that an order has to be passed, indicating as to how the period under suspension shall be treated. The sa

"152. (1) When a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to

order the reinstatement shall consider and make a specific order.-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b) whether or not the said period shall be treated as a period spent on duty."

Further conditions have also been mentioned in sub-rules (2) to (5) of Rule 152. It is submitted that the appellant was not served with any notice by the respondent under Rule 152 and that the decision was taken without affording any opportunity of being heard.

Mr. Hasurkar, the learned Additional Government Pleader, contended that the Disciplinary Authority was fully justified in treating the period of suspension as such as the delinquent employee was found guilty of all the charges framed against him. According to the learned counsel, Rule 152 of the B.C.S.R. gives ample authority to the Disciplinary Authority to pass such orders and that the appellant was given notice regarding the punishment and there was no necessity to give any separate notice before passing an order under Rule 152.

In another case decided by a learned single Judge of this Court in *State of Gujarat v. Vrajilal Hansraj Sanghrajka*, reported in XIII-1972 GLR 680, it was held that...

"... While passing any order, the competent authority will be required to hold as to whether his case will fall under clauses (1), (2) or (3) of the said rule. Sometimes, it may happen that even though the criminal Court on merits may have acquitted the accused and yet the final order may disclose as if benefit of doubt was given to him and he was acquitted. Therefore, in order to decide whether the person concerned was acquitted on merits or whether he was given benefit of doubt, it is essential that the person concerned should be heard by the competent authority. If without giving him an opportunity any order is passed behind his back, there was every

likelihood of injustice being done to him.
Even for the purpose of calculation of the
actual suspension period, it would be
necessary to hear the person concerned...."

Though the instant case stands on a different footing, the principles laid down in the above two cases can be followed while passing an order under Section 152 of the BCSR. The order under Rule 152 BCSR is not passed as part of the punishment and no such punishment is envisaged under Bombay Police Punishment Rules. As this order may sometimes have far reaching financial consequences as far as the employee is concerned, it is just and equitable that he be given reasonable opportunity of being heard and that alone would be perfectly in accord with the principles of natural justice. Therefore, we set aside Annexure 'H' order, which is confirmed by Annexure 'J' order, so far as it relates to the stand taken that the period of suspension be treated as such, and direct that the Competent Authority may issue fresh notice to the appellant under Rule 152 of the BCSR and the appellant be heard before any decision is taken under Rule 152. The Authorities may take a decision having regard to the provisions contained in Rule 152.

In view of the aforesaid circumstances, we partly allow the Appeal to the extent indicated above.

(apj)